vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4728 OF 2005

Smt.Pritam Prabhakar Gawade & Ors. ... Petitioners

V/s.

Raigad Zilla Parishad & Anr. ... Respondents

Mr.P.N. Anaokar i/b A.B. Desai for Petitioners
Mr.C.G. Gavnekar with Mr.Gavankar for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 20, 2005**

P.C.:

. The Petition challenges the interim order passed by the Industrial Court rejecting the application filed by the Petitioners for staying the transfer orders issued to them. The Petitioners who are the complainants before the Industrial Court filed complaints under Items 3,5,9 and 10 of Schedule IV of the MRTU & PULP Act. The grievance of the Petitioners is that their services have been transferred from Poynad where they are working as Auxillary Nurse Midwives in Primary Health Department. The Petitioners have been transferred to other places in breach of the government order dated 24.4.2005. This order deals with inter-district transfer of employees working in Zilla

Parishads in Clauses 3 and 4. Clause 4 indicates that the seniority list is to be prepared before transferring employees. The seniority which is to be taken into account is to be drawn up upto the first of October of that year. The seniormost employee is to be transferred first and thereafter the other employees can be transferred. Admittedly, in the present case, the Petitioner No.1 has completed approximately 7 years at Poynad. Petitioner NO.2 has been at Poynad for a year and 10 months. Petitioner No.3 contends that her transfer is in violation of the government order because the transfer does not take into consideration the guiding principles which are laid down in the government order whereby if both the husband and wife are employees of the Zilla Parishad, they should be posted at the same place as far as possible; if not they should not be transferred to a place which is more than 30 kms. away from the residence. The Petitioners contend that this government order has been violated since there are others who are senior to the petitioners who have been retained at Poynad whereas the Petitioners have been transferred.

2. Prima facie, there appears to be an unfair labour practice under Item 3 of Schedule IV and Item 9 of Schedule IV of the MRTU & PULP Act. The Division

Bench in the case of *Kisan s/o. Yemaji Kharat & Ors. v/s. Zilla Parishad, Buldana*, **1993 II CLR 1064** was considering the government instructions and guidelines issued regarding the transfer of primary teachers. The Division Bench has held thus:

> 3. ... But, however, before we part with this order, we make a warning to all Zilla Parishads in this region and more particularly Buldana and Wardha that the policies and guidelines laid down in the circulars issued by the State Government are require to be observed and the zilla Parishads cannot go on flouting the same and make transfer orders fraught with nepotism and favouritism. We, therefore, warn the Zilla Parishads that in case this Court comes across transfer orders in breach of the guidelines, this Court will be left with no alternative but to suspend transfer orders, no matter how the educational institution run by the zilla parishad would stand paralysed. We do hope that the Zilla Parishad and the next higher authorities shall take due note of this order so that while making transfer orders in future, the same are in adherence to the guidelines and the circulars. In the meantime, the concerned Zilla Parishads to consider representation if made by some of the petitioners with due sympathy and more particularly, if the husband and the wife could be retained at one station and if the same is not possible, then to have them placed at some closer stations. Subject to the above observations, a copy of this order to go to the Chief Executive Officer of the Zilla Parishad in Vidarbha Region. Subject to the aforesaid observations/ directions, these petitions are rejected.

3. In view of these observations of the Division Bench of this Court, I see no reason why the interim relief could not have been granted to the Petitioners.

4. Mr.Gavnekar, appearing for the Respondents, relies on the judgment in the case of *Conservator of Forests, Yavatmal circle, Yavatmal v/s. Shamrao Ramkrushna Deshmukh,* **1990 Mh.L.J.702** to submit that these guidelines cannot be enforced in the Courts as they have no statutory character. However, it is a judgment of a learned Single Judge of this Court and therefore, the judgment of the Division Bench would be binding on me. In my view, it would therefore, be appropriate to grant interim relief to the petitioners.

5. Mr.Gavnekar, appearing for the Respondents, submits that other employees have already taken charge consequent to the transfer of the Petitioners and therefore, no orders should be passed. The Petitioners have stated in their affidavit that the concerned employees have not taken charge and accepting this statement made by the petitioners, the order of the Industrial Court is set aside. The Petitioners are permitted to continue in the original place of work. Petition is disposed off accordingly.